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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

No. 702 10

M. LUTHER PITTMAN, CLERK OF THE SUPERIOR COURT OF BALTIMORE CITY,

Petitioner.

vs.

HOME OWNERS' LOAN CORPORATION OF WASHINGTON, D. C.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND AND ARGUMENT IN SUPPORT THEREOF.

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The Daily Record Co. Print, Baltimore.

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, M. Luther Pittman, Clerk of the Superior Court of Baltimore City, by William C. Walsh, Attorney General of the State of Maryland, respectfully prays for a writ of certiorari herein to review a certain final order and judgment of the Court of Appeals of the State of Maryland, being the highest Court of said State, entered and filed on December 1, 1938, affirming a final order of the Baltimore City Court entered and filed on

June 10, 1938, directing that a writ of mandamus be issued by the Clerk of the Baltimore City Court, commanding your petitioner, as Clerk of the Superior Court of Baltimore City, to receive and record a certain mortgage from Martin J. Burns and Mary Burns, his wife, to the Home Owners' Loan Corporation, dated March 11, 1938, upon the payment of the ordinary statutory recordation charge and "without the requirement of the affixation of the State of Maryland Documentary Stamps nor the State recordation tax of fifty cents" (R. 23).

OPINIONS BELOW.

The opinion of the Court of Appeals of the State of Maryland has not yet been officially reported but it is printed in the record and is unofficially reported in 2 Atl. (2d) 689, (Adv. Sheets). The opinion of the Baltimore City Court is not reported but is printed in the record (R. 14-22).

The decision of the Court below was based solely upon the decision of this Court in *Federal Land Bank vs. Crosland*, 261 U. S. 374, where it was held that a mortgage to the Federal Land Bank was not subject to a recordation tax imposed by an Alabama statute.

JURISDICTION.

The order of the Court of Appeals of the State of Maryland was entered on December 1, 1938. On petition the mandate was stayed pending an application to this Court for a writ of certiorari. The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229; 43 Stat. 936; 28 U. S. C., Sec. 344. The Court below held the Maryland statute imposing a recordation tax invalid to the extent that it taxed the re-

cordation of mortgages to the Home Owners' Loan Corporation, on the ground that the Home Owners' Loan Corporation is, under the Constitution and laws of the United States, exempt from taxation on its mortgages; that it is an instrumentality of the Federal government; that it is subject only to such State taxation as the statute creating it permits; and that the imposition of the tax in this case has been prohibited by the Act of Congress creating the Home Owners' Loan Corporation.

STATUTES INVOLVED.

The pertinent statutory provisions are Sections 213 and 214 of Article 81 of the Code of Public General Laws of Maryland (as enacted by Chapter 11 of the Acts of the Special Session of the General Assembly of Maryland of 1937) and the Home Owners' Loan Act of 1933, approved June 13, 1933, Chapter 64; 48 Stat. 128, (12 U. S. C., Secs. 1461-1463a).

The Maryland statutory provisions are as follows:

> "213. A tax is hereby imposed upon every instrument of writing recorded or offered for record with the Clerks of the Circuit Courts of the respective Counties, or the Clerk of the Superior Court of Baltimore City, on and after June 1, 1937, to and including September 30th, 1939, including mechanics liens, deeds, mortgages (except purchase money mortgages), chattel mortgages, bills of sale, conditional contracts of sale, leases, confessed judgments, magistrates' judgments, crop liens, deeds of trust, and any and all other instruments of writing, so recorded or offered for record, which create liens or incumbrances on real or personal property, or convey title to real or personal property; provided however, that said tax shall not apply to assignments of mortgages, purchase money mortgages, absolute or partial releases, or orders of satisfaction.

"The tax hereby imposed shall be at the rate of 10c for each $100, or fractional part thereof, of the actual consideration paid or to be paid, for the property transferred, in the case of instruments conveying title, and at the rate of 10c for each $100, or fractional part thereof, of the principal amount of the debt secured, in the case of instruments securing a debt, or reserving title as security for a debt.

"In addition to the tax hereby imposed, the Clerks shall collect a charge of 50c for each such instrument recorded or offered for record.

"214. No such instrument shall be received for record by any Clerk of the Court unless and until a stamp is affixed to said instrument and canceled. The Comptroller shall supply to the Clerks of the Circuit Courts of the respective Counties or the Clerk of the Superior Court of Baltimore City, stamps to evidence the payment of said tax, for sale to persons offering such instruments for record, under such rules and regulations as the Comptroller may prescribe. The proceeds from the sale of said stamps, together with the recordation charges herein provided, shall be accounted for and paid over to the Comptroller who shall deposit the same in the 'State Fund for Aid to the Needy' to be disbursed therefrom for the purposes and in the manner prescribed by law.

"It shall be unlawful for any person to record any written instrument referred to in this sub-title without having provided for the payment of the tax and recordation charge as herein provided, and it shall be unlawful for any person to misrepresent the amount of the actual consideration in any such transaction. Any person violating the provisions of this sub-title shall be subject to a fine of not more than $500.00 or to a sentence of not more than six months in jail."

It is conceded that this statute imposes a tax and not merely a service charge for recording.

The Home Owners' Loan Act of 1933 is set out in full in the appendix, *infra*, pp. 21-32.

The respondent, Home Owners' Loan Corporation, was created by the Federal Home Loan Bank Board, pursuant to Section 1463a of the Home Owners' Loan Act of 1933, which provides as follows:

> "The Board is hereby authorized and directed to create a corporation to be known as the Home Owners' Loan Corporation, which shall be an instrumentality of the United States, which shall have authority to sue and to be sued in any court of competent jurisdiction, Federal or State, and which shall be under the direction of the Board and operated by it under such by-laws, rules and regulations as it may prescribe for the accomplishment of the purposes and intent of this section. The members of the Board shall constitute the Board of Directors of the Corporation and shall serve as such directors without additional compensation."

We are here particularly concerned only with that part of Section 1463(c) of the Act which reads as follows:

> "The bonds issued by the corporation under this sub-section shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any estate, county, municipality, or local taxing authority. The corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed."

QUESTION PRESENTED.

The question presented is whether the Clerk of the Superior Court of Baltimore City is required to receive and record a mortgage on Maryland real estate from residents of Maryland to the Home Owners' Loan Corporation without the payment of the Maryland recordation tax of fifty cents and without the said mortgage having affixed to it the State of Maryland Documentary Stamps required to be affixed to other like mortgages in the State of Maryland. More broadly speaking the question is whether the Home Owners' Loan Corporation is a governmental instrumentality of the United States and as such immune from State taxation on the recordation of mortgages to it.

STATEMENT.

The petitioner is the Clerk of the Superior Court of Baltimore City (a court of record of the State of Maryland) and as such, under the laws of Maryland, has charge of the recording of all deeds, mortgages and other like instruments conveying real estate located in Baltimore City (R. 5). A duly executed mortgage to the Home Owners' Loan Corporation on real estate in Baltimore City was presented to the petitioner with the request that the same be recorded among the Land Records of Baltimore City. The correct amount of the statutory recordation charge was tendered but since there were no State of Maryland Documentary Stamps affixed to the mortgage and since the Home Owners' Loan Corporation refused to pay the recordation tax of fifty cents the petitioner refused to accept the mortgage for record (R. 5-6).

Under the Maryland law the recording of the mortgage was necessary for the adequate protection of the

mortgagee (R. 5) and upon the refusal of the petitioner to record the mortgage without the stamps being affixed thereto and without the payment of the special recordation tax of fifty cents, the Home Owners' Loan Corporation filed a petition for a writ of mandamus in the Baltimore City Court (R. 4-12). The petition was demurred to and, the demurrer being overruled, the petitioner herein refused to answer. The Baltimore City Court then passed an order directing the Clerk thereof to issue the writ of mandamus (R. 23). It is conceded that the facts (but not the conclusions of law) stated in the petition are true.

The petition alleges that the Home Owners' Loan Corporation is a corporate instrumentality of the United States organized, existing and operating pursuant to the Home Owners' Loan Act of 1933 (12 U. S. C. Secs. 1461 to 1463a, inclusive) whose entire capital stock is owned by the United States (R. 4). The Home Owners' Loan Corporation has been operating in Maryland as well as in other States and in the course of its operations made a loan of $111.00, payable one day after date, with interest at 5% per annum, to Martin J. Burns and Mary Burns upon the security of a mortgage on certain leasehold property in Baltimore City (R. 4-5). The mortgage was promptly tendered to the petitioner, as the Clerk of the Superior Court of Baltimore City, for record but he refused to record the same unless the tax prescribed by Sections 213 and 214 of Article 81 of the Code of Public General Laws of Maryland was paid in addition to the usual recordation charge which was tendered to him (R. 5-6). The petition further alleges that the stamp and recording tax imposed by said Sections 213 and 214 of the Maryland Code is an excise tax and not

a service charge, and that the Home Owners' Loan Corporation, by reason of the Home Owners' Loan Act of 1933 and the fact that it is an instrumentality of the United States, is immune and exempt from State taxation on its mortgages; and that the attempted collection of the tax is an unlawful interference with its operations, placing a burden, impediment and obstruction upon its functions, and operating to hinder, delay and embarrass it in the exercise of the duties imposed upon it by law (R. 6-7).

As illustrative of the scope of the corporation's operations, the petition alleges that about $46,000,000 have been loaned on mortgages in Maryland since operations were begun and that the corporation has acquired title to about 2,000 separate pieces of property in Maryland (R. 7).

REASONS FOR GRANTING THE WRIT.

The recordation tax on deeds, mortgages and other instruments offered for record was imposed by an Act passed at a special session of the Maryland Legislature in an effort to provide essential revenues for aid to the needy and to match Federal appropriations under the Social Security Act. The statute is not discriminatory; it applies to all alike; and it does not contain any exemptions or exceptions. If, as held by the Court below, an exemption must be written into the Act by the overriding force of the Federal Constitution in favor of the Home Owners' Loan Corporation then a similar exemption must exist as to each of the other numerous lending agencies of the Federal Government. If the claimed immunity is confirmed in this case, then we may expect a similar claim to immunity to be made by the Reconstruction Finance Corporation, the Farm and Crop lending

agencies, the Federal Reserve Banks, the National Banks, the State Banks which are members of the Federal Reserve System, the Federal Savings & Loan Corporations, the Federal Housing Administration and the many other Federal lending agencies too numerous to mention. If so, this legitimate source of State taxation would be substantially impaired because it is common knowledge that a very large percentage of loans made in recent years have emanated from these lending agencies. The question presented is, therefore, one of the utmost importance to the State of Maryland and one which vitally affects a substantial source of revenue.

The case presents to this Court a number of questions of constitutional law on which an authoritative decision by this Court is essential. These questions are: (1) whether the Court below was correct in following the decision of this Court in *Federal Land Bank v. Crosland*, 261 U. S. 374, instead of the reasoning in the more recent decisions of this Court, such as *James v. Dravo Contracting Co.*, 302 U. S. 134; *Silas Mason Co. v. State Tax Commission of Washington*, 302 U. S. 186; *Atkinson v. State Tax Commission of Oregon*, 303 U. S. 20; *Helvering v. Mountain Producers Corporation*, 303 U. S. 376; *Helvering v. Gerhardt*, 304 U. S. 405, and *Allen v. Regents of University System of Georgia*, 304 U. S. 439; (2) whether the burden on the Federal Government of a State tax on the recordation of a mortgage to the Home Owners' Loan Corporation, which could be and customarily is paid by the mortgagor, would not be so speculative and so uncertain as not to be prohibited by the Federal Constitution; (3) whether the functions and activities of the Home Owners' Loan Corporation are proprietary, rather than governmental in their nature; and (4) whether the Home Owners' Loan Corporation is immune from State

taxation on the recordation of its mortgages when the tax is not discriminatory but is uniform and imposes no burden which is not borne by private lending agencies.

WHEREFORE your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the Court of Appeals of the State of Maryland, to review the determination of the Court of Appeals, the court of last resort of the State of Maryland, as provided by law, and that your petitioner may have such other and further relief as may be deemed appropriate. A certified copy of the record in the Court below and of the proceedings in that Court is submitted herewith.

Respectfully submitted,

M. LUTHER PITTMAN,
Clerk of the Superior Court of
Baltimore City.

By WILLIAM C. WALSH,
Attorney General of the
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Dated February 25, 1939.

ARGUMENT IN SUPPORT OF PETITION.

SPECIFICATION OF ERRORS.

The Court of Appeals of Maryland erred:

1. In holding that the decision of this Court in *Federal Land Bank v. Crosland*, 261 U. S. 374, was controlling.

2. In failing to hold that the burden of the tax on the Government of the United States was speculative and uncertain, if, indeed, it existed at all in view of the fact that the tax could be and customarily is paid by the mortgagor.

3. In failing to hold that the functions and activities of the Home Owners' Loan Corporation were proprietary rather than governmental in their nature.

4. In holding that the Home Owners' Loan Corporation was entitled to constitutional immunity from the tax.

5. In failing to hold that the Home Owners' Loan Corporation was not immune from the tax in view of the fact that the tax was uniform, operated upon all persons and corporations offering mortgages for record, and did not discriminate against the Home Owners' Loan Corporation or the United States.

ARGUMENT.

The decision of the Court below was based squarely and solely upon the decision of this Court in *Federal Land Bank v. Crosland*, 261 U. S. 374. That case, however, may be distinguished from the case at bar on several grounds. The Alabama statute there involved im-

posed the tax on the lender whereas the Maryland tax is imposed on the recordation of the instrument and is silent as to who shall pay the tax. It is, of course, customarily paid by the borrower and it is within the power of the lender in any case to avoid payment of the tax by requiring its payment by the borrower. It is true that in its opinion in the *Crosland* case this Court pointed out that the tax there under consideration might be collected by the lender from the borrower and stated that this should not make any difference. But the fact remains that the Alabama tax was a tax on the lender whereas the Maryland tax is not. Likewise the decision in the *Crosland* case depended on the provisions of the Federal Farm Loan Act which declared the mortgages to Federal Land Banks to be instrumentalities of the government of the United States and, as such, exempt from Federal, State, municipal and local taxation. There is no such provision in the Home Owners' Loan Act of 1933. The Home Owners' Loan Corporation is declared to be an instrumentality of the United States but its mortgages are not declared to be such instrumentalities although its "loans and income" are declared to be exempt from taxation. Moreover, the Home Owners' Loan Act of 1933 expressly authorizes non-discriminatory taxes on real estate owned by the Home Owner's Loan Corporation and it might well be argued that the Maryland tax is in effect a tax on real estate and thus within the exemption from immunity.

However, we prefer to rest our argument on broader considerations and we are willing to concede that if the decision in the *Crosland* case is still to be considered as a binding precedent in spite of the recent decisions of this Court, then the decision of the Court below was correct.

We rely on three fundamental propositions: first, the Home Owners' Loan Corporation is exercising a proprietary rather than a governmental function, and is, therefore, not entitled to any constitutional immunity from State taxation; second, the Maryland tax is not a burden on the Home Owners' Loan Corporation, or, if it is, the burden is so slight, inconsequential, indirect and speculative as not to be prohibited; and, third, the Maryland tax is uniform and not discriminatory and therefore not prohibited.

I.

THE HOME OWNERS' LOAN CORPORATION IS NOT ENTITLED TO IMMUNITY BECAUSE ITS FUNCTIONS AND ACTIVITIES ARE PROPRIETARY RATHER THAN GOVERNMENTAL IN THEIR NATURE.

Much could be said in support of this proposition. However, the question is now before this Court for determination in the cases of *Graves v. State of New York ex rel. O'Keefe*, No. 478, October Term, 1938 and *State Tax Commission of Utah, v. Van Cott*, No. 491, October Term, 1938.

It seems, therefore, unnecessary to labor the point here. Nevertheless reference might be made to *South Carolina v. United States*, 199 U. S. 437; *Willcuts v. Bunn*, 282 U. S. 216; *Indian Motor Cycle Co. v. United States*, 283 U. S. 570; *Helvering v. Powers*, 293 U. S. 214; *Baltimore National Bank v. State Tax Commission*, 297 U. S. 209; *James v. Dravo Contracting Co.*, 302 U. S. 134; *Helvering v. Gerhardt*, 304 U. S. 405 and *Allen v. Regents of University System of Ga.*, 304 U. S. 439.

Regardless of the beneficent motives behind the lending program of the Congress, of which the activities of

the Home Owners' Loan Corporation are a part, we submit that the lending of money, traditionally and actually, is a proprietary function. Assuming the power of the Congress to lend money for any purpose national in its scope, it is apparent that the distinction between the delegated powers of the Congress, and the broader police powers of the States, furnishes no barrier to the continued extension of Federal activities in proprietary fields. But the question whether the constitutional tax immunity is as broad as the spending power has not been decided. It may be decided in the cases now pending before this Court.

II.

THE MARYLAND TAX IS NOT A BURDEN ON THE HOME OWNERS' LOAN CORPORATION.

Even if it be conceded that the Home Owners' Loan Corporation is a governmental instrumentality of the United States it would not for that reason alone be entitled to the implied constitutional immunity from the Maryland recordation tax, unless the tax was actually and in fact a burden on the Home Owners' Loan Corporation and operated to obstruct or impede its functions and activities.

While it may be true that in some of the earlier cases the Court was concerned chiefly with the question of whether or not the functions of the particular agency involved were governmental or proprietary in their nature, nevertheless the question of whether or not there was a burden also existed. In the more recent cases chief emphasis has been placed upon the question of whether or not the tax in question was in fact a substantial burden and the decisions have turned on

whether or not such a burden existed rather than on whether or not the functions of the particular agency were governmental in their nature. Thus in *Brush v. Commissioner of Internal Revenue*, 300 U. S. 352, the majority opinion was devoted almost entirely to the question of whether or not the operation of a municipally owned water system was an essential governmental function, but as pointed out by the Court in *Helvering v. Gerhardt*, 304 U. S. 405, the question of whether or not the tax was any real burden was not raised or considered. And Mr. Justice Roberts, in his dissenting opinion in the *Brush* case pointed out clearly that a tax imposed on a governmental agency is not invalid unless the burden of the tax be "palpable and direct, rather than hypothetic and remote." (300 U. S. 375). In *James v. Dravo Contracting Co.*, 302 U. S. 134, the question of whether or not the activities under consideration were governmental or proprietary in their nature was considered, but the decision of the Court turned on the question of whether or not the tax was a burden on the government. The tax in that case was upheld on the ground that it was not a burden on the government and did "not interfere in any substantial way with the performance of federal functions". See also, *Willcuts v. Bunn*, 282 U. S. 216; *Silas Mason Co. v. State Tax Commission of Washington*, 302 U. S. 186; and *Atkinson v. State Tax Commission of Oregon*, 303 U. S. 20.

But even if there was any doubt that constitutional immunity did not exist when the tax did not directly burden the government and obstruct and impede it in the exercise of its governmental functions, such doubt was removed by the decision of this Court in *Helver-*

ing v. Gerhardt, 304 U. S. 405. There it was tacitly conceded that the functions of the Port of New York Authority were governmental rather than proprietary in their nature, but the validity of the tax was nevertheless upheld and the Court clearly and positively stated the rule that immunity does not exist unless the burden on the State is actual and substantial and not merely conjectural.

In the restatements of the law in these recent cases, we find nothing to indicate that the rule would not be applied reciprocally. It is unlikely that this Court should consider the burden of such an indirect tax as "speculative and uncertain" in the case of a State agency but not in the case of a Federal agency. Moreover, where the denial of immunity was based upon the *remoteness* of the tax, this Court has always applied the rule reciprocally. Many examples might be given; the *Dravo* case, *supra*, is one, dealing with an independent contractor with the Federal Government. In the *Mountain Producers Corp.* case, *supra*, this Court overruled both *Gillespie v. Oklahoma*, 257 U. S. 501, and *Burnet v. Coronado Oil Co.*, 285 U. S. 393, as being "out of harmony with correct principle". It is highly significant that these were converse cases, one involving leases of Federal Indian lands, the other State school lands. This Court also referred to the fact that both Congress and the States were held to have the right to tax bequests to the States or to the United States, *United States v. Perkins*, 163 U. S. 625 and *Snyder v. Bettman*, 190 U. S. 249. Compare also *Indian Motorcycle Co. v. United States*, 283 U. S. 570 and *Panhandle Oil Co. v. Mississippi*, 277 U. S. 218, cited in the *Dravo* case.

There can hardly be any doubt but that the burden of the Maryland recordation tax on the Home Owners' Loan Corporation is wholly uncertain and conjectural. Indeed it would seem to be clear that the tax is actually no burden at all on the Home Owners' Loan Corporation. Certainly the tax is not levied against the corporation nor is it paid by the corporation. If immunity is granted to the corporation it will benefit its borrowers who are citizens and residents of the State of Maryland or owners of real estate therein, but will not benefit the corporation. Any contention to the contrary simply ignores the facts.

If the tax is in fact paid by the borrower, what possible burden can there be on the Home Owners' Loan Corporation? The case is even clearer than the *Gerhardt* case. There it could be argued that the income tax on its employees increased the expense of operation of the Port of New York Authority. Yet this Court held that the burden was too conjectural and remote and infringed no constitutional immunity. But in the case at bar not even this remote and conjectural burden exists. The tax does not, either directly or indirectly, increase the cost of operation of the Home Owners' Loan Corporation. Not even the economic burden of the tax is passed on to it. The only advantage which can be derived by the Home Owners' Loan Corporation from a grant of immunity is a purely competitive advantage over private lending agencies.

It seems to us that it can be said that a burden exists only if it be assumed that the function of the Home Owners' Loan Corporation is not merely to lend money to needy persons unable to secure private financing, but to induce persons to borrow money from it rather than

from private lending agencies. If this be its function then the tax would be a burden because it would take away the inducement that exemption from the recordation tax offers. But such an assumption would do violence to the expressed purposes of the Home Owners' Loan Act of 1933 and could hardly have serious consideration.

Actually the Home Owners' Loan Corporation in claiming immunity is seeking exemption from the tax, not for itself but for its borrowers. This Court said in the *Gerhardt* case: "The effect of the immunity if allowed would be to relieve respondents of their duty of financial support to the national government, in order to secure to the state a theoretical advantage so speculative in its character and measurement as to be unsubstantial." In the case at bar the effect of the immunity if allowed would be to relieve private persons of their duty of financial support to the State of Maryland *without securing any advantage whatsoever to the Home Owners' Loan Corporation.*

III.

THE MARYLAND TAX IS UNIFORM AND NOT DISCRIMINATORY AND THEREFORE NOT PROHIBITED.

It is unnecessary to repeat here what has been said previously that the fact that an agency exercises governmental functions does not of itself entitle the agency to constitutional immunity from tax. Just as the tax must constitute a burden on the governmental agency before it will be stricken down, so also it must be discriminatory before it will be held invalid.

In *McCullouch v. Maryland*, 4 Wheat. 316, the first case in which the doctrine of implied constitutional im-

munity was recognized, the tax was clearly discriminatory and it was for this reason that it was held invalid. In later cases the conception that immunity exists only against discriminatory taxes was lost sight of, but in more recent years the trend has certainly been the other way and now the doctrine is firmly established in the decisions of this Court. See dissenting opinion of Mr. Justice Roberts in *Brush v. Commissioner of Internal Revenue*, 300 U. S. 375; *Willcuts v. Bunn*, 282 U. S. 216; *Helvering v. Mountain Producers Corp.*, 303 U. S. 376; *James v. Dravo Contracting Co.*, 302 U. S. 134; *Helvering v. Gerhardt*, 304 U. S. 405.

By no flight of the imagination could the Maryland recordation tax be considered discriminatory. The Home Owners' Loan Corporation is not taxed at all. The borrowers pay no more tax than would be required of them if they borrowed from private lending agencies. A grant of immunity would create discrimination, not do away with it, because a grant of immunity would place the borrowers from the Home Owners' Loan Corporation in a favored position by exempting them from the tax; it would give the Home Owners' Loan Corporation an unfair advantage over private lending agencies; it would tend to discourage loans by private lending agencies and encourage loans by the Home Owners' Loan Corporation. Certainly this is not the result which the Congress desired to achieve.

CONCLUSION.

We feel that it is desirable, in view of the vital importance of the present case to the State of Maryland, that this Court determine whether the loans of the Home Owners' Loan Corporation are immune from the payment of the Maryland recordation tax.

The State of Maryland derives a substantial revenue from this perfectly legitimate source of taxation. If immunity is granted in the case at bar it will be claimed by each of the other numerous Federal lending agencies. The State of Maryland will lose considerable revenue and the Federal Government will gain nothing. Certainly such a result is neither desirable nor necessary.

Wherefore it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX.

U. S. C.—TITLE 12—BANKS AND BANKING.

§1461. Short title.

This chapter may be cited as the "Home Owners' Loan Act of 1933." (June 13, 1933, c. 64, §1, 48 Stat. 128).

§1462. Definitions.

As used in this chapter—

(a) The term "Board" means the Federal Home Loan Bank Board created under Chapter 11 of this title.

(b) The term "Corporation" means the Home Owners' Loan Corporation created under section 1463 of this chapter.

(c) The term "home mortgage" means a first mortgage on real estate in fee simple or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable, or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which there is located a dwelling or dwellings for not more than four families, which is used in whole or in part by the owner as a home or held by him as his homestead, and which has a value of not to exceed $20,000; and the term "first mortgage" includes such classes of first liens as are commonly given to secure advances on real estate under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(d) The term "association" means a Federal Savings and Loan Association chartered by the Board as provided in section 1464 of this chapter. (June 13, 1933, c. 64, §2, 48 Stat. 128; June 27, 1934, c. 847, §508 (a), 48 Stat. 1264; May 28, 1935, c. 150, §10, 49 Stat. 296.)

§1463. Home Owners' Loan Corporation.

(a) *Creation; directors.* The Board is hereby authorized and directed to create a corporation to be known as the Home Owners' Loan Corporation, which shall be an instrumentality of the United States, which shall have authority to sue and to be sued in any court of competent jurisdiction, Federal or State, and which shall be under the direction of the Board and operated by it under such bylaws, rules and regulations as it may prescribe for the accomplishment of the purposes and intent of this section. The members of the Board shall constitute the Board of Directors of the Corporation and shall serve as such directors without additional compensation.

(b) *Capital stock; subscription by United States; allocation of funds by Reconstruction Finance Corporation.* The Board shall determine the minimum amount of capital stock of the Corporation and is authorized to increase such capital stock from time to time in such amounts as may be necessary, but not to exceed in the aggregate $200,000,000. Such stock shall be subscribed for by the Secretary of the Treasury on behalf of the United States, and payments for such subscrpition shall be subject to call in whole or in part by the Board and shall be made at such time or times as the Secretary of the Treasury deems advisable. The Corporation shall issue to the Secretary of the Treasury receipts for payments by him for or on account of such stock, and such receipts shall be evidence of the stock ownership of the United States. In order to enable the Secretary of the Treasury to make such payments when called, the Reconstruction Finance Corporation is authorized and directed to allocate and make available to the Secretary of the Treasury the sum of $200,000,000, or so much thereof as may be necessary, and for such purpose the amount of the notes, bonds, debentures, or other such obligations which the Reconstruction Finance Corporation is authorized and empowered under section 609

of Title 15, to have outstanding at any one time, is hereby increased by such amounts as may be necessary.

(c) *Bond issue by corporation authorized; interest and principal guaranteed by United States; exemption from taxation.* In order to provide for applications filed before May 28, 1935, for applications filed within thirty days thereafter, and for carrying out the other purposes of this section, the Corporation is authorized to issue bonds in an aggregate amount not to exceed $4,750,000,000, which may be exchanged as hereinafter provided, or which may be sold by the Corporation to obtain funds for carrying out the purposes of this section or for the redemption of any of its outstanding bonds; and the Corporation is further authorized to increase its total bond issue for the purpose of retiring its outstanding bonds by an amount equal to the amount of the bonds to be so retired (except bonds retired from payments of principal on loans), such retirement to be at maturity or by call or purchase or exchange or any method prescribed by the Board with the approval of the Secretary of the Treasury: *Provided*, That no bonds issued under this subsection, as amended, shall have a maturity date later than 1952. Such bonds shall be in such forms and denominations, shall mature within such periods of not more than eighteen years from the date of their issue, shall bear such rates of interest not exceeding 4 per centum per annum, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices, as may be prescribed by the Corporation, with the approval of the Secretary of the Treasury. Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security, for all fiduciary trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Corporation shall be unable to pay upon

demand, when due, the principal of, or interest on, such bonds, the Secretary of the Treasury shall pay to the holder the amount thereof which is hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such bonds. The Secretary of the Treasury, in his discretion, is authorized to purchase any bonds of the Corporation issued under this subsection which are guaranteed as to interest and principal, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under Sections 752, 753 and 757 of Title 31, and the purposes for which securities may be issued under such sections are extended to include any purchases of the Corporation's bonds hereunder. The Secretary of the Treasury may, at any time, sell any of the bonds of the Corporation acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of the bonds of the Corporation shall be treated as public-debt transactions of the United States. The bonds issued by the Corporation under this subsection shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any state, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed. No such bonds shall be issued in excess of the assets of the Corporation, including the assets to be obtained from the proceeds of such bonds, but a failure to comply with this provision shall not invalidate the bonds or the guaranty of the

same. The Corporation shall have power to purchase in the open market at any time and at any price not to exceed par any of the bonds issued by it. Any such bonds so purchased may, with the approval of the Secretary of the Treasury, be sold or resold at any time and at any price. For a period of six months after the date this subsection, as amended, takes effect, the Corporation is authorized to refund any of its bonds issued prior to such date or any bonds issued after such date in compliance with commitments of the Corporation outstanding on such date, upon application of the holders thereof, by exchanging therefor bonds of an equal face amount issued by the Corporation under this subsection as amended, and bearing interest at such rate as may be prescribed by the Corporation with the approval of the Secretary of the Treasury; but such rate shall not be less than that first fixed after this subsection, as amended, takes effect on bonds exchanged by the Corporation for home mortgages. For the purpose of such refunding the Corporation is further authorized to increase its total bond issue in an amount equal to the amount of the bonds so refunded. Nothing in this subsection shall be construed to prevent the Corporation from issuing bonds in compliance with commitments of the Corporation on April 27, 1934.

(d) *Exchange of bonds for mortgages; amortization of mortgages; interest rates.* The Corporation is authorized, for a period of three years after June 13, 1933, (1) to acquire in exchange for bonds issued by it, home mortgages and other obligations and liens secured by real estate (including the interest of a vendor under a purchase-money mortgage or contract) recorded or filed in the proper office or executed prior to June 13, 1933, and (2) in connection with any such exchange, to make advances in cash to pay the taxes and assessments on the real estate, to provide for necessary maintenance and make necessary repairs, to meet the incidental expenses of the transaction, and to pay such amounts, not exceeding $50, to the holder of the mortgage, obligation, or lien

acquired as may be the difference between the face value of the bonds exchanged plus accrued interest thereon and the purchase price of the mortgage, obligation, or lien. The face value of the bonds so exchanged plus accrued interest thereon and the cash so advanced shall not exceed in any case $14,000, or 80 per centum of the value of the real estate as determined by an appraisal made by the Corporation, whichever is the smaller. In any case in which the amount of the face value of the bonds exchanged plus accrued interest thereon and the case advanced is less than the amount the home owner owes with respect to the home mortgage or other obligation or lien so acquired by the Corporation, the Corporation shall credit the difference between such amounts to the home owner and shall reduce the amount owed by the home owner to the Corporation to that extent. Each home mortgage or other obligation or lien so acquired shall be carried as a first lien or refinanced as a home mortgage by the Corporation on the basis of the price paid therefor by the Corporation, and shall be amortized by means of monthly payments sufficient to retire the interest and principal within a period of not to exceed fifteen years; but the amortization payments of any home owner may be made quarterly, semiannually, or annually, if in the judgment of the Corporation the situation of the home owner requires it. Interest on the unpaid balance of the obligation of the home owner to the Corporation shall be at a rate not exceeding 5 per centum per annum. The Corporation may at any time grant an extension of time to any home owner for the payment of any installment of principal or interest owed by him to the Corporation if, in the judgment of the Corporation, the circumstances of the home owner and the condition of the security justify such extension. As used in this subsection, the term "real estate" includes only real estate held in fee simple or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable, or (2) under a lease having a period of not less than fifty years to run

from the date the mortgage was executed, upon which there is located a dwelling or dwellings for not more than four families, which is used in whole or in part by the owner as a home or held by him as his homestead, and which has a value of not to exceed $20,000. No discrimination shall be made under this chapter against any home mortgage by reason of the fact that the real estate securing such mortgage is located in a municipality, county, or taxing district which is in default upon any of its obligations.

For the purposes of this chapter, levies of assessments upon real property, made by any special district organized in any State for public improvements, shall be treated as general-tax levies are treated. The Board shall determine the reasonableness of the total annual burden of taxes and assessments of all kinds upon any property offered as security for the payment of a loan made by the Corporation and the effect of the total levies upon the loanable value of such property, but no deduction shall be made from the loanable value of any property for levies not due at the time of making such loan in any instance where the total annual taxes and assessments borne by the said property for all purposes does not exceed a sum which, in the discretion of the Board, is a reasonable annual tax burden for such property.

(e) *Cash loans on unincumbered property; interest.* The Corporation is further authorized, for a period of three years from June 13, 1933, to make loans in cash subject to the same limitations and for the same purposes for which cash advances may be made under subsection (d) of this section, in cases where the property is not otherwise encumbered; but no such loan shall exceed 50 per centum of the value of the property securing the same as determined upon an appraisal made by the Corporation. Each such loan shall be secured by a duly recorded home mortgage, and shall bear interest at the same rate and shall be subject to the

same provisions with respect to amortization and extensions as are applicable in the case of obligations refinanced under subsection (d) of this section.

(f) *Cash loans on mortgaged property; interest.* The Corporation is further authorized, for a period of three years from June 13, 1933, in any case in which the holder of a home mortgage or other obligation or lien eligible for exchange under subsection (d) of this section does not accept the bonds of the Corporation in exchange as provided in such subsection and in which the Corporation finds that the home owner cannot obtain a loan from ordinary lending agencies, to make cash advances to such home owner in an amount not to exceed 40 per centum of the value of the property for the purposes specified in such subsection (d). Each such loan shall be secured by a duly recorded home mortgage and shall bear interest at a rate of interest which shall be uniform throughout the United States, but which in no event shall exceed a rate of 6 per centum per annum, and shall be subject to the same provisions with respect to amortization and extensions as are applicable in cases of obligations refinanced under subsection (d) of this section.

(g) *Loans to redeem foreclosed property.* The Corporation is further authorized to exchange bonds and to advance cash to redeem or recover homes lost by the owners by foreclosure or forced sale by a trustee under a deed or trust or under power of attorney or by voluntary surrender to the mortgagee subsequent to January 1, 1930, subject to the limitations provided in subsection (d) of this section.

(h) *Appraisal rules.* The Board shall make rules for the appraisal of the property on which loans are made under this section so as to accomplish the purposes of this chapter: *Provided*, That no person shall be allowed to act as appraiser if he is in the employ of any company holding a loan on the property, or if he is interested in the subject matter of the loan.

(i) *Payment of loans in bonds of Corporation.* Any person indebted to the Corporation may make payment to it in part or in full by delivery to it of its bonds which shall be accepted for such purpose at face value.

(j) *Officers and employees; compensation; free use of mails.* The Corporation shall have power to select, employ, and fix the compensation of such officers, employees, attorneys, or agents as shall be necessary for the performance of its duties under this chapter, without regard to the provisions of other laws applicable to the employment or compensation of officers, employees, attorneys, or agents of the United States. No such officer, employee, attorney, or agent shall be paid compensation at a rate in excess of the rate provided by law in the case of the members of the Board. The Corporation shall be entitled to the free use of the United States mails for its official business in the same manner as the executive departments of the Government, and shall determine its necessary expenditures under this chapter and the manner in which they shall be incurred, allowed, and paid, without regard to the provisions of any other law governing the expenditure of public funds. The Corporation shall pay such proportion of the salary and expenses of the members of the Board and of its officers and employees as the Board may determine to be equitable, and may use the facilities of Federal Home Loan Banks, upon making reasonable compensation therefor as determined by the Board. No person shall be appointed or retained as an officer, employee, agent, or attorney, at a fixed salary, in any regional or State office of the Corporation who is an officer or director of any firm, corporation, or association engaged in lending money on real estate; nor shall any person be appointed or retained as an officer, employee, agent, or attorney in any State or district office of the Corporation, who has not been a bona fide resident of the State served by such office for a period of at least one year immediately preceding the date of his appointment.

(k) *By-laws, rules and regulations; cancellation of bonds; liquidation of Corporation; dividends.* The Board is authorized to make such by-laws, rules and regulations, not inconsistent with the provisions of this section, as may be necessary for the proper conduct of the affairs of the Corporation. The Corporation is further authorized and directed to retire and cancel the bonds and stock of the Corporation as rapidly as the resources of the Corporation will permit. All payments upon principal of loans made by the Corporation shall under regulations made by the Corporation be applied to the retirement of the bonds of the Corporation. Upon the retirement of such stock, the reasonable value thereof as determined by the Board shall be paid into the Treasury of the United States and the receipts issued therefor shall be canceled. The Board shall proceed to liquidate the Corporation when its purposes have been accomplished, and shall pay any surplus or accumulated funds into the Treasury of the United States. The Corporation may declare and pay such dividends to the United States as may be earned and as in the judgment of the Board it is proper for the Corporation to pay.

(l) *When mortgagor must be in default.* No home mortgage or other obligation or lien shall be acquired by the Corporation under subsection (d), and no cash advance shall be made under subsection (f), unless the applicant was in involuntary default on June 13, 1933, with respect to the indebtedness on his real estate and is unable to carry or refund his present mortgage indebtedness: *Provided*, That the foregoing limitation shall not apply in any case in which it is specifically shown to the satisfaction of the Corporation that a default after such date was due to unemployment or to economic conditions or misfortune beyond the control of the applicant.

(m) *Advances for rehabilitation, modernization, etc., of homes.* In all cases where the Corporation is authorized to advance cash to provide for necessary mainten-

ance and to make necessary repairs it is also authorized to advance cash or exchange bonds for the rehabilitation, modernization, rebuilding and enlargement of the homes financed; and in all cases where the Corporation has acquired a home mortgage or other obligation or lien it is authorized to advance cash or exchange bonds to provide for the maintenance, repair, rehabilitation, modernization, rebuilding, and enlargement of the homes financed and to take an additional lien, mortgage, or conveyance to secure such additional advance or to take new home mortgage for the whole indebtedness; but the total amount advanced shall in no case exceed the respective amounts or percentages of value of the real estate as elsewhere provided in this section. Not to exceed $400,000,000 of the proceeds derived from the sale of bonds of the Corporation shall be used in making cash advances to provide for necessary maintenance and necessary repairs and for the rehabilitation, moderinzation, rebuilding and enlargement of real estate securing the home mortgages and other obligations and liens acquired by the Corporation under this section.

(n) *Purchase of obligations of other banks and associations.* The Corporation is authorized to purchase Federal Home Loan Bank bonds, debentures, or notes, or consolidated Federal Home Loan Bank bonds or debentures. The Corporation is also authorized to purchase full-paid-income shares of Federal Savings and Loan Associations after the funds made available to the Secretary of the Treasury for the purchase of such shares have been exhausted. Such purchases of shares shall be on the same terms and conditions as have been heretofore authorized by law for the purchase of such shares by the Secretary of the Treasury: *Provided*, That the total amount of such shares in any one association held by the Secretary of the Treasury and the Corporation shall not exceed the total amount of such shares heretofore authorized to be held by the Secretary of the Treasury in any one association. The Corporation is

also authorized to purchase shares in any institution which is (1) a member of a Federal Home Loan Bank, or (2) whose accounts are insured under sections 1724 to 1730 of this title, if the institution is eligible for insurance under such title; and to make deposits and purchase certificates of deposit and investment certificates in any such institution. Of the total authorized bond issue of the Corporation $300,000,000 shall be available for the purposes of this subsection, without discrimination in favor of Federally chartered associations, and bonds of the Corporation not exceeding such amount may be sold for the purposes of this subsection. (June 13, 1933, c. 64, §4, 48 Stat. 129; April 27, 1934, c. 168, §§1 (a), 2, 3, 4, 13, 48 Stat. 643, 644, 645, 647; June 27, 1934, c. 847, §§506 (a), (b), 508 (b), 48 Stat. 1263, 1264; May 28, 1935, c. 150, §§10-16, 17 (a), 49 Stat. 296-297.)

§1463a. Bonds issued under original provisions; interest and principal.

The amendments made by the Act of April 27, 1934, to subsection (c) of section 1463 of this title (except with respect to refunding) shall not apply to any bonds prior to April 27, 1934, issued by the Home Owners' Loan Corporation under such subsection (c) of section 1463, or to any bonds thereafter issued in compliance with commitments of the Corporation outstanding on April 27, 1934. (April 27, 1934, c. 168, §1, (b), 48 Stat. 644.)